

\*E-Filed 09/30/2010\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MITCHELL E. BOUYER, et al.,

No. C 10-3351 RS

Plaintiffs,

v.

**ORDER GRANTING MOTION TO  
DISMISS, WITH LEAVE TO AMEND,  
AND REQUIRING RESPONSE FROM  
PLAINTIFFS TO AVOID DISMISSAL  
OF ACTION**

INDYMAC BANK, et al.,

Defendants.

Plaintiffs Mitchell and Martha Bouyer, appearing in *pro se*, filed this action in an apparent attempt to halt non-judicial foreclosure proceedings against their home. Plaintiff's motion for a temporary restraining order, filed on the morning a trustee's sale was scheduled to take place, was denied on grounds that they had failed to present sufficient facts and evidence to establish a basis for relief.

In largely conclusory and general terms, the complaint asserts that defendant HSBC Bank and/or other unspecified "defendants," engaged in improper lending practices giving rise to a right of rescission, and that the foreclosure proceedings are wrongful.<sup>1</sup> It appears unlikely that the complaint includes sufficient fact regarding plaintiffs' loan transaction and the acts or omissions of

<sup>1</sup> HSBC is the only defendant specifically identified in the body of the complaint. The complaint also contains at least two passing reference to NLC Financial Services, LLP, an entity not listed among the defendants in the caption, but described as "the lender."

1 each defendant that plaintiffs contend were wrongful to state a claim against any defendant. The  
2 present motion to dismiss, however, is brought only by defendant Mortgage Electronic Registration  
3 Systems, Inc., an entity listed in the caption as "MERS," but nowhere else even mentioned in the  
4 complaint. As such, the complaint unquestionably fails to state a claim against MERS, and its  
5 motion to dismiss must be granted.

6 Because this is an initial pleading and in view of plaintiffs' status as *pro se* litigants, leave to  
7 amend will be granted. It appears, however, that plaintiffs may have intended to abandon this  
8 action, as they filed no opposition to the motion to dismiss, and did not appear at the hearing.  
9 Accordingly, it is hereby ordered that:

- 11 1. The motion to dismiss is granted, with leave to amend.
- 12 2. Plaintiffs must file any amended complaint no later than October 22, 2010.
- 13 3. In the event plaintiffs do not file an amended complaint, they will be deemed to have  
14 abandoned this action, and it will be dismissed in its entirety. The dismissal will be with prejudice  
15 as to MERS, and without prejudice as to any other defendants.

16  
17 Should plaintiffs desire to continue pursuing this action against any of the defendants, they  
18 may wish to consult the Court's "Handbook for Litigants Without a Lawyer," available from the  
19 Clerk's Office or on the Court's website at <https://ecf.cand.uscourts.gov/cand/ProSe/home.htm>

20  
21 IT IS SO ORDERED.

22  
23 Date: 9/30/10

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25 RICHARD SEEBORG  
26 UNITED STATES DISTRICT JUDGE

27  
28 No. C 10-03351 RS  
ORDER

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**THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:**

**Mitchell E. Bouyer**  
88 Beatrice Road  
Brisbane, CA 94005

**Martha E. Bouyer**  
88 Beatrice Road  
Brisbane, CA 94005

DATED: 08/30/2010

/s/ Chambers Staff  
Chambers of Judge Richard Seeborg

\* Counsel are responsible for distributing copies of this document to any co-counsel who have not registered with the Court's electronic filing system.

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ORDER